IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16117 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMBA BHAVUBHA

Versus

BHAVNAGAR MUNICIPAL CORPORATION

Appearance:

1. Special Civil Application No. 16117 of 2003

MR SURESH M SHAH for Petitioner.

MR HS MUNSHAW for Respondent.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 06/07/2004

ORAL JUDGEMENT

The petitioner who is having her cabin near R.T.O. Office, Bhavnagar, has preferred the present Special Civil Application under Article 226 of the Constitution of India for an appropriate writ, direction or order restraining the respondent Corporation from removing the cabin "Jhalak" near RTO Office, Bhavnagar permanently.

2. The petitioner was granted land on lease basis for putting up a cabin by the erstwhile Bhavnagar Borough Municipality. It is the case of petitioner that she was running the cabin "Jhalak" on the said land for about 20 years before. As she was sought to be removed from the land by the respondent, the petitioner preferred Special Civil Application No. 2098 of 1989 before this Court and this Court by its order dated 18.11.1989 passed an order to consider the case of the petitioner for granting alternative site. Pursuant to the same the petitioner was allotted land admeasuring 10' x 10' for cabin and therefore the petitioner withdrew the said Special Civil Application. It is the case of petitioner that since then the petitioner is having the cabin "Jhalak" and the petitioner is also given electricity connection. By notice dated 13.11.2003 the petitioner is called upon and directed to remove the cabin within 7 days from the receipt of the said notice alleging inter alia that the cabin which is occupied by the petitioner is on the main Bhavnagar-Rajkot Road which causes hindrance to the traffic; it has been decided by the Corporation to construct Traffic Circle and therefore a notification is already issued under Section 230 of the Bombay Provincial Municipal Corporations Act; there is a ban in putting up the lorry/cabin on the public road and/or footpath; and Municipality is also restrained from granting permission to put such lorry/cabin on public road and foothpath. Being aggrieved and dissatisfied with the said notice dated 13.11.2003 the present Special Civil Application is filed under Article 226 of the Constitution of India.

3. Shri SM Shah, learned advocate appearing on behalf of the petitioner, has vehemently submitted that as the petitioner was allotted the land pursuant to the order passed by this Court in Special Civil Application No. 2098 of 1989 the petitioner cannot be removed. He has also further submitted that the petitioner is leased the land in question by the Bhavnagar Municipal Corporation and therefore the petitioner cannot be removed. He has also further submitted that there are other cabins on the line by the side of the petitioner which are all unauthorised and except the petitioner none of them is given notice to remove their cabins. Alternatively, he has also submitted that the petitioner is ready and willing to go to other available site in the same line that may be given as an alternative site to the petitioner by the respondent in lieu of the site of the petitioner which is allotted to the petitioner 13 years before by the respondent. He has also submitted that as such the cabin of the petitioner is not in any way

causing hindrance to the traffic nor does it create any obstruction to the traffic and for the purpose of even constructing the traffic circle the cabin of the petitioner is not required to be removed. He has also further submitted that in view of the fact that the petitioner is having his cabin since last more than 13 years and that too on the basis of the allotment made by the respondent at least before issuing the notice the petitioners should have been given an opportunity of being heard.

4. Pursuant to the notice issued by this Court, Shri HS Munshaw, learned advocate appears on behalf of the respondent Corporation. An affidavit-in-reply is also filed opposing the said Special Civil Application wherein it is submitted that the land occupied by the petitioner is part of footpath/pavement which could not have been in any case be allotted to the petitioner. It is also further submitted that the petitioner's cabin is allocated at Gadhechi-Vadla Circle which is a traffic intersection. It was decided to prepare a traffic circle with private participation. It is further submitted that Gadhechi-Vadla traffic intersection being a major traffic congestion point the Municipal Corporation has undertaken a project for improvement of this intersection and a Consultant was appointed by Ministry of Urban Development, Government of India for the purpose of preparing a traffic and transportation improvement plan for Municipal Corporation and a plan has been prepared for the City of Bhavnagar and accordingly improvement of Gadhechi-Vadla intersection has been undertaken and it is at advanced stage of completion. It is also further submitted in the reply that existence of encroachments on footpath/pavements is source of nuisance to the public and it is the duty of the Municipal Corporation under the provisions of the BPMC Act to take measures for removal of obstructions and projections in or upon streets and other public places. It is further submitted that accordingly a notice has been issued directing the petitioner to move the cabin. It is further submitted that as such the petitioner has made permanent structure on footpath/pavement and thereby has been blocking the entire footpath/pavement. It is also further submitted that a notification is issued under Section 230 of the BPMC Act prohibiting putting up any thing on the public street. It is also further submitted that the controversy which is raised in the present Special Civil Application is already decided by this Court in the case of Self Employed Workers Organisation Vs. Bhavnagar Municipal Corporation and Others, reported in 2003(3) G.L.H. Page 82. Therefore it is submitted that there is

no substance in the present Special Civil Application and the same is required to be dismissed.

5. As held in catena of judgments by the Hon'ble Supreme Court of India and this Court, the persons who are on the footpath/pavement have no right to continue their business/occupation on the road. It is found by the authorities that the cabin of the petitioner is on the footpath/pavement on Gadhechi-Vadla road which is causing obstruction to the traffic. It is also observed that the petitioner has put up the permanent structure and in view of the provisions of Section 230 of the BPMC Act read with Section 63(19), firstly there cannot be any permanent structure/cabin on the footpath/pavement, and it is the duty of the Municipal Corporation to take measures for removal of obstructions and projections in or upon streets and other public places. It is the duty of the municipal authorities to maintain the public streets for free, safe and convenient use of public. Considering the traffic problems and considering the report submitted by the Expert and the Plan prepared by the Consultant appointed by the Ministry of Urban Development, Government of India, the Corporation had decided to improve traffic intersections in the City for improvement in traffic and transportation of public at large, and for that purpose a traffic circle was being put up.

6. Under the circumstances, it cannot be said that the action of the respondent is in any way illegal or arbitrary. However, in view of the fact that the petitioner was allotted the land of 10'x 10' for the purpose of putting up the cabin by the Municipal Corporation and she is in occupation of the same since last 13 years it would have been desirous of at least giving an opportunity of being heard to the petitioner. Accordingly, it is directed that the impugned notice dated 13.11.2003 be treated as a show cause notice and the respondents are directed to give an opportunity of hearing before taking decision of evicting or removing the petitioner from the land in question. For that purpose, the petitioner is directed to appear before the Corporation on 19th of July 2004. However, this order would not mean that the petitioner has any statutory right over the land in question to continue with the occupation. With this observation, the present Special Civil Application is disposed of accordingly. Notice is discharged.

[M.R. Shah, J.]

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